



SMALL BUSINESS ADMINISTRATION

RIN: 3245-AI02

Small Business Innovation Research Program and Small Business Technology Transfer Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Notice of technical amendments; request for comments.

SUMMARY: The Small Business Administration is amending the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs Policy Directive to incorporate a template for agencies participating in the SBIR or STTR programs (Participating Agencies) to request the disclosure of statutorily required information from SBIR or STTR applicants.

DATES: These revisions to the SBIR/STTR Policy Directive take effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further action, unless significant adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, SBA will publish a timely withdrawal of the notice in the *Federal Register*.

ADDRESSES: You may submit comments, identified by number SBA-XXX-XXXX, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. Please do not submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Erick Page-Littleford at (202) 718-7738 or erick.page-littleford@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The mission of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs is to engage small business concerns (SBCs) to support scientific excellence and technological innovation through the investment of Federal research and research and development (R/R&D) funding in critical American priorities to build a strong national economy. Both programs follow a three-phase process throughout the Federal Government to solicit proposals and award funding agreements for R/R&D: Phase I, Phase II, and Phase III.

Section 9 of the Small Business Act (the Act), 15 United States Code (U.S.C.) 638(j) and (p), requires that the Small Business Administration (SBA) issue a policy directive setting forth guidance to the Participating Agencies. The SBIR and STTR (SBIR/STTR) Policy Directive outlines how agencies must generally conduct their programs. Each Participating Agency, however, may tailor its program to meet the needs of the individual Agency, as long as the general principles of the program set forth in the Act and directive are followed. Therefore, when incorporating SBIR/STTR policy into agency-specific regulations and procedures, Participating Agencies may develop and apply processes needed to implement the policy effectively; however, no Participating Agency may develop and apply policies, directives, or clauses that contradict, weaken, or conflict with the policy as stated in the Policy Directive.

SBA reviews its SBIR/STTR Policy Directive regularly to determine areas that need updating and further clarification. The SBIR and STTR Extension Act of 2022 (Extension Act), Pub. L. 117-183 (Sep. 30, 2022), amended section 9 of the Act; 15 U.S.C. 638(g)(13)-(17), (o)(17)-(21), and (vv), to require small businesses applying for SBIR or STTR awards to disclose information about the applicant's investment and foreign ties. SBA is amending Section 9(a) of the Policy Directive and adding an appendix to address responsibilities of Participating Agencies to collect disclosures of information about the applicant's investment and foreign ties, as required by the Extension Act. This amendment provides a common template, based on the statutory language in the Act, to uniformly capture the required disclosures. This action is

designated a direct final rulemaking because SBA is adopting the statutory language for the disclosure template questions with minor clarifying edits.

II. Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. Sections 4(b)(2)(B) and 5(c) of the Extension Act exclude the application of the Paperwork Reduction Act to the collection of information related to the implementation of a due diligence program authorized by 15 U.S.C. 638(vv). The collection of information pursuant to the disclosure template is referenced in section 15 U.S.C. 638(vv)(2)(A) and (B), is related to the implementation of a due diligence program, and therefore is exempt from the requirements of the Paperwork Reduction Act.

III. Amendment

Section 9 – Responsibilities of SBIR/STTR Agencies and Departments

The Extension Act, Pub. L. 117-183 (Sep. 30, 2022), amended section 9 of the Act; 15 U.S.C. 638 (g)(13)-(17), (o)(17)-(21), and (vv) to require small businesses applying for SBIR or STTR awards to disclose information about the applicant's investment and foreign ties. This information must be provided by applicants for an SBIR or STTR award and must be considered as part of each Participating Agency's implementation of a due diligence program to assess security risks, as required by section 4 of the Extension Act, and incorporated into the Act at section 638(vv)(2). Sections 4(b)(2)(B) and 5(c) of the Extension Act exclude the application of the Paperwork Reduction Act, 44 U.S.C. chapter 35, to the collection of information related to the implementation of a due diligence program authorized by 15 U.S.C. 638(vv).

SBA is amending Section 9(a) of the Policy Directive and adding an appendix to address the responsibilities of Participating Agencies to collect disclosures of certain information about the applicant's investment and foreign ties, as required by the Extension Act. This amendment

provides a common template, based on the statutory language in the Act, to uniformly capture required disclosures.

Some Participating Agencies are concerned about collecting the disclosed information prior to publication of the disclosure template in the *Federal Register*, subject to public comment, in accordance with the requirements of 41 U.S.C. 1707(a). SBA is amending the Policy Directive, as a final rulemaking, to address that concern and to ensure that the disclosures may be collected without further delay. SBA is following the process at 41 U.S.C. 1707(a)(2), to allow a 30-day comment period prior to the effective date of this rulemaking. SBA believes that it is a compelling circumstance to limit the comment period to 30 days because section 4(b) of the Extension Act requires Participating Agencies to implement a due diligence program that considers the disclosed information within 270 days of the Extension Act's passage on September 30, 2022. SBA intends to provide further interpretive guidance on the disclosure template questions to Participating Agencies.

Notice of the Disclosure Template in the Policy Directive for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

To: The SBIR and STTR Program Managers

Subject: SBIR/STTR Policy Directive

1. Purpose. The Small Business Administration (SBA) is updating its Small Business Innovation Research and Small Business Technology Transfer (SBIR/STTR) Policy Directives to include a disclosure template for Participating Agencies to collect statutorily required information from SBIR/STTR applicants.

2. Authority. The Small Business Act (15 U.S.C. 638(j) and (p)) requires the SBA Administrator to issue an SBIR and STTR program Policy Directive for the general conduct of the programs. The Small Business Act (15 U.S.C. 638(g)(13)-(17), (o)(17)-(21), and (vv)(2)) requires that Participating Agencies collect disclosures of certain information from SBIR and

STTR applicants regarding investments and foreign ties, as relates to the implementation of a due diligence program to assess security risks.

3. Procurement Regulations. There are no procurement regulations created through this action.

4. Personnel Concerned. This SBIR/STTR Policy Directive serves as guidance for all Federal Government personnel who are involved in the administration of the SBIR and STTR programs, issuance and management of funding agreements or contracts pursuant to the programs, and/or the establishment of goals for small business concerns in research or research and development acquisition or grants.

5. Originator. SBA's Office of Investment and Innovation.

This amendment to the SBIR/STTR Policy Directive will be effective on the date shown in the **DATES** section unless SBA receives any significant adverse comments on or before the deadline for comments set forth in the **DATES** section. Significant adverse comments are comments that provide strong justifications why the clarifying amendment to the Policy Directive should not be adopted as written or should be changed further. SBA does not expect to receive any significant adverse comments because the amendment adopts the statutory language regarding the disclosures of information from SBIR/STTR applicants, as relates to the implementation of a due diligence program. Implementation of this change will benefit the public by ensuring that Participating Agencies are using the same template to collect this information and will ensure that Participating Agencies receive information that is useful for determining whether there are security risks posed by particular SBIR or STTR applicants. If SBA receives any significant adverse comments, SBA will publish a notice in the *Federal Register* withdrawing this notice before the effective date.

6. Date. Public comments on the proposed amendments to the Policy Directive must be submitted within 30 days following publication in the *Federal Register*.

Authorized By:

Dated March 28, 2023.

Isabelle Casillas-Guzman,
Administrator.

List of Subjects

SBIR/STTR Policy Directive

1. Amend section 9(a)(5) by adding a new paragraph (13)
after paragraph (12).

The addition reads as follows:

9. Responsibilities of SBIR/STTR Agencies and Departments

(a) General Responsibilities. Each agency participating in the SBIR/STTR program must:

(1) * * *

* * * * *

(13) Require disclosures from applicants utilizing the questions provided in the template at Appendix III as a part of the agency due diligence program to assess security risks under section 15 U.S.C. 638(vv). Agencies may require small business concerns to certify that the information disclosed is accurate and complete.

2. Amend by adding Appendix III to the end of the SBIR/STTR Policy Directive, as follows:

Appendix III: Required Disclosures of Foreign Affiliations or Relationships to Foreign Countries

Relevant Definitions

Covered individual - the term "covered individual" means an individual who-

(A) contributes in a substantive, meaningful way to the scientific development or execution of a research and development project proposed to be carried out with a research and development award from a federal research agency; and

(B) is designated as a covered individual by the federal research agency concerned.

Foreign affiliation - the term "foreign affiliation" means a funded or unfunded academic, professional, or institutional appointment or position with a foreign government or government-owned entity, whether full-time, part-time, or voluntary. This includes appointments or positions deemed adjunct, visiting, or honorary with research institutions located in a foreign country of concern.

Foreign country of concern - the term "foreign country of concern" means the People's Republic of China, the Democratic People's Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State.

Malign foreign talent recruitment program - the term "malign foreign talent recruitment program" has the meaning given such term in section 19237 of title 42.

Federally funded award - the term "federally funded award" means a Phase I, Phase II (including a Phase II award under subsection (cc)), or Phase III SBIR or STTR award made using a funding agreement.

Applicant or awardee Name: _____

Applicant or awardee EIN (UEI if EIN is unavailable): _____

Responses to disclosure questions may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with an award between the submitter and the Government.

An up-to-date list of countries determined to be countries of concern by the Secretary of State will be maintained and accessible on SBIR.gov.

Disclosure Questions

1. Is any owner or covered individual of the applicant or awardee party to any malign foreign talent recruitment program?

☐ Yes ☐ No

If yes, disclose the first and last name of each owner or covered individual, identify their role (i.e., owner or covered individual), and the malign foreign talent recruitment program.

2. Is there a parent company, joint venture, or subsidiary, of the applicant or awardee that is based in or receives funding from, any foreign country of concern?

☐ Yes ☐ No

If yes, disclose the name, full address, applicant or awardee relationships (i.e., parent company, joint venture, or subsidiary) of each entity based in, or funded by, any foreign country of concern.

3. Does the applicant or awardee have any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity?

☐ Yes ☐ No

If yes, disclose the name of each enterprise or foreign entity, type of obligation, agreement, or arrangement (i.e., contractual, financial, or other), description of obligation, agreement, or arrangement, and the foreign state(s) and/or the country of the foreign entity (or entities).

4. Is the applicant or awardee wholly owned in a foreign country?

☐ Yes ☐ No

If yes, disclose the foreign country.

5. Does the applicant or awardee have any venture capital or institutional investment?

☐ Yes ☐ No

If yes, proceed to question 5a. If no, proceed to question 6.

5a. Does the investing entity have a general partner or any other individual holding a leadership role who has a foreign affiliation with any foreign country of concern?

☐ Yes ☐ No ☐ Unable to determine

If yes or unable to determine, disclose the venture capital or institutional investing entity's name, the percentage of ownership obtained by the investing entity, and the type of investment (i.e., equity, debt, or combination of equity and debt).

6. During the previous 5-year period, did the applicant or awardee have any technology licensing or intellectual property sales or transfers, to a foreign country of concern?

☐ Yes ☐ No If yes, disclose the name, address, and country, of the institution or entity that licensed, purchased, or received the technology or intellectual property.

7. Is there any foreign business entity, offshore entity, or entity outside the United States related to the applicant or awardee?

☐ Yes ☐ No If yes, disclose the entity name, relationship type (i.e., foreign business entity, offshore entity, entity outside the United States), description of the relationship to the applicant or awardee, and entity address and country.

8. Does the applicant or awardee have an owner, officer, or covered individual that has a foreign affiliation with a research institution located in a foreign country of concern?

☐ Yes ☐ No

If yes, disclose the first and last name of each owner, officer, or covered individual that has a foreign affiliation with a foreign country of concern, identify their role (i.e., owner, officer, or covered individual), and the name of the foreign research institution and the foreign country of concern where it is located.